

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1177 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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GOVINDBHAI DEVLIIYABHAI VASAVA

Versus

STATE OF GUJARAT

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Appearance:

MS BANNA S DUTTA for the appellant  
MR DN PATEL, APP for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.P.DHOLAKIA  
Date of decision:16-10-1998

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

Appellant-accused has preferred this appeal against the judgment and order passed by the learned Addl. Sessions Judge, Valsad, Navsari in Sessions Case No.113 of 1996 whereby the accused was tried for the

offences punishable under Secs.323, 504 and 302 of Indian Penal Code. Appellant was ordered to undergo rigorous imprisonment for life for an offence punishable under Sec.302 of Indian Penal Code and to pay a fine of Rs.3,000/- (in default, to suffer two months imprisonment). Accused was also ordered to undergo simple imprisonment for fifteen days and to pay a fine of Rs.100/- (in default, to suffer imprisonment for five days) for an offence punishable under Sec.434 of Indian Penal Code. The sentence was ordered to run concurrently.

2. The prosecution case in short is that on 1-2-1996 at about 10 to 10.30 p.m., complainant, accused and others were gambling on cards. Accused demanded Rs.10/- from the complainant which was remained to be paid by the complainant. As complainant did not pay the same, accused gave one slap on his face and gave abuses. At that time, Parsi Hira intervened to pacify them. Thereafter, accused went to his hut and came back with a big knife and inflicted a blow with it below the neck of Parsi Hira and accused ran away. Parsi Hira succumbed to the injuries sustained by him. Thereafter, complainant alongwith one Udesingh went to Police station and lodged the complaint. Police started the investigation and after completion of the same, submitted the charge-sheet against the accused. A charge was framed against the accused after having committed the accused to the Court of Sessions. Accused pleaded innocence and claimed to be tried. The learned Addl. Sessions Judge on appreciation of evidence, convicted the accused against which, the present appeal is preferred.

3. We issued notice to the State and called for the record and proceedings. We heard Ms.Banna Datta, learned advocate appearing for the appellant. She argued that eye witnesses upon which the prosecution relied, are not the witnesses of incident, therefore, their evidence ought not to have been considered by the learned trial Judge. She contended that prosecution could not link the injury with the weapon alleged to have been used by the accused. She further contended that the evidence regarding the bodily injury is not matching with the injury shown in the post-mortem report. Lastly, she argued that as it was night time, many people gathered there and in scuffle, someone else might have inflicted the blow on the deceased and accused was wrongly implicated.

4. We have also heard learned Addl. Public Prosecutor and have gone through the record and

proceedings. On going through the oral evidence of prosecution witnesses, namely complainant-Maganbhai, Shantiben, wife of the deceased and Kashinath Bhambre, it appears that, they are witnesses of incident as it is established from their evidence that complainant, accused, deceased and others were gambling cards. In this case, the question of identifying the accused does not arise as complainant, accused and witnesses were staying nearby and they are working in the sugar factory. It is an admitted position on the part of prosecution as well as on defence part that they used to gamble cards prior to the date of incident. So, presence of accused is very well established.

5. Regarding the contention of learned advocate for the appellant that injury does not match with the weapon, Dr.Ramchandra Patil's evidence falsifies the same. It is in the evidence of witnesses that accused inflicted a blow below the neck of deceased and it is proved that muddamal article No.6-knife was used in the commission of said offence. The learned advocate for the appellant raised a contention that the muddamal was easily accessible to all and blow might have been given by someone else. But it is proved by the prosecution that bloodstains which were found on the clothes of the deceased and on the knife are of the same group, that is of the deceased. So contention of the learned advocate for the appellant on this aspect also does not survive.

6. Ms.Banna Datta further contended that as only one blow was inflicted and looking to the said injury, learned Addl. Sessions Judge ought to have awarded sentence under Sec.304 Part II only. It is to be noted that the incident in question did not happen all of a sudden or out of provocation, but, first quarrelling took place, thereafter, accused went to his hut, came with the knife and inflicted the blow on vital part of deceased, who, according to the prosecution, was totally innocent. Hence, looking to the facts and circumstances of the case, we are of the view that the sentence awarded by the learned Addl. Sessions Judge is proper and not required to be interfered with.

7. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the facts and circumstances of the case, appeal stands rejected.

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